

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 15

BY SENATORS BOSO AND GAUNCH

[Passed February 17, 2016;
in effect 90 days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §55-7-30, relating generally to manufacturers and sellers of prescription drugs
3 and medical devices and liability of those entities for alleged inadequate warning or
4 instruction; and adopting the learned intermediary doctrine as defense to civil action based
5 upon inadequate warnings or instructions.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §55-7-30, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

**§55-7-30. Adequate pharmaceutical warnings; limiting civil liability for manufacturers or
sellers who provide warning to a learned intermediary.**

1 (a) A manufacturer or seller of a prescription drug or medical device may not be held liable
2 in a product liability action for a claim based upon inadequate warning or instruction unless the
3 claimant proves, among other elements, that:

4 (1) The manufacturer or seller of a prescription drug or medical device acted unreasonably
5 in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to
6 prescribing or other health care providers who are in a position to reduce the risks of harm in
7 accordance with the instructions or warnings; and

8 (2) Failure to provide reasonable instructions or warnings was a proximate cause of harm.

9 (b) It is the intention of the Legislature in enacting this section to adopt and allow the
10 development of a learned intermediary doctrine as a defense in cases based upon claims of
11 inadequate warning or instruction for prescription drugs or medical devices.